

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

MIKEAL GLENN STINE,

Inmate #55436-098,

Plaintiff,

vs.

RANDY DAVIS,

Defendant.

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CIVIL NO. 05-468-GPM

MEMORANDUM AND ORDER

MURPHY, Chief District Judge:

This action comes before the Court on Plaintiff's Petition for Writ of Mandamus pursuant to 28 U.S.C. § 1651. Plaintiff seeks return of a pair of eyeglasses that Defendants at the United States Penitentiary in Marion, Illinois, confiscated for security reasons. Such a claim is appropriately brought in an action pursuant to the Federal Tort Claims Act ("FTCA"), 28 U.S.C. § 2671 *et seq.*

However, the Court cannot construe this action as one under the FTCA because such a claim requires Plaintiff first to present his claim to the Bureau of Prisons for internal adjudication. *See* 28 U.S.C. § 2675(a). Failure to exhaust administrative remedies before bringing suit under the FTCA requires dismissal of the action. *See Palay v. United States*, 349 F.3d 418, 425 (7th Cir. 2003). Accordingly, the claim is **DISMISSED without prejudice** to Plaintiff's refiling after he has exhausted the agency's administrative remedies.

IT IS SO ORDERED.

DATED: 08/11/05

s/ G. Patrick Murphy

G. PATRICK MURPHY

Chief United States District Judge